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PENTADBIR TANAH DAERAH KOTA SETAR v. TUNKU YAACOB HOLDINGS SDN BHD & OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
KAMALUDIN MD SAID JCA
B HASHIM HAMZAH JCA
AZIZUL AZMI ADNAN JCA
[CIVIL APPEAL NOS: K-01(NCVC)(A)-614-08-2022, K-01(NCVC)(A)-615-08-2022, K-01(NCVC)(A)-623-08-2022 & K-01(NCVC)(A)-624-08-2022]
C 22 MARCH 2024

Abstract – *The forced acquisition of property is an incursion into fundamental liberties and, therefore, the Land Acquisition Act 1960 must be construed strictly to resolve ambiguities. However, it is not open* D *for the court to disapply the provisions of written law where the meaning of the provision in question is clear and unambiguous. Section 47(2)(d) of the Land Acquisition Act 1960 requires that any decision, relating to an award of compensation in an acquisition of land, must be appended with the reasons for the award of compensation. The decision must be in* E *writing and signed by the judge and the assessors as provided in s. 47(1). These requirements must be strictly adhered to.*

F ***LAND LAW:*** *Acquisition of land – Compulsory acquisition – Award of compensation – Whether reasons for award of compensation must be given – Whether reasons must be in writing – Whether decision must be signed by judge and assessors – Whether absence of assessors' signature contravened requirements under s. 47(1) of Land Acquisition Act 1960*

G ***CIVIL PROCEDURE:*** *Appeal – Memorandum of appeal – Compulsory acquisition of land – Objection to compensation – Appeal by Land Administrator ('LA') – Whether memorandum of appeal by LA bereft of details – Whether failed to raise real question of law – Whether notices in substantial compliance with Form 1 in First Schedule to Rules of the Court of Appeal 1994 – Whether there can be no question of law in appeal from decision of land reference court – Whether premature to pronounce on adequacy or otherwise of questions of law posed – Land Acquisition* H *Act 1960, ss. 36(4), 37(1) & 49(1)*

Tunku Yaacob Holdings Sdn Bhd was the registered proprietor ('landowner') of two pieces of land, Lots 150 and 151. Notice had been given to it in July 2011 for the compulsory acquisition of the two pieces of lands. On Lot 150 I was a derelict semi-constructed building, which at the time of the notice in Form E, had already been abandoned for some 30 years. Lot 151 was an empty plot. Before the grant of the award of compensation by the Land Administrator ('LA'), the landowner challenged the legality of the

compulsory acquisition through judicial review proceedings. It was ultimately unsuccessful in these judicial review proceedings. Form K under the Land Acquisition Act 1960 ('LAA') was issued on 30 October 2011, which meant that formal possession of the lands was deemed to have been taken on this date. On 17 August 2011, the LA for Kota Setar awarded RM12,017,842.36 as compensation for the acquisition of Lot 150 and RM12,524,950.72 for Lot 151. The landowner objected to the amount of compensation awarded and applied for its objection to be referred to the High Court. The land reference proceedings at the High Court were commenced in February 2012 but subsequently stalled, and only resumed once leave to appeal in the judicial review proceedings was refused by the Federal Court in November 2017. At the High Court, the amount of compensation was substantially increased, principally on the basis that value ought to be attributed to the derelict building on Lot 150, but also based on a reassessment of the land value. Hence, the four appeals herein (i) Appeal No. 614 and Appeal No. 615 by the LA against the determination of the High Court in regard to Lot 150 and Lot 151, respectively; (ii) Appeal No. 623 by the landowner against the decision, in respect of Lot 150, to award late payment charges commencing from the refusal of the leave application at the Federal Court for the judicial review proceedings (November 2017), rather than the date on which vacant possession was deemed to have been taken (November 2011); and (iii) Appeal No. 624 by the landowner in respect of Lot 151 on the timing of commencement of late payment charges.

Held (allowing Appeal Nos 614 and 615; striking out Appeal Nos 623 and 624 with no order as to costs)
Per Azizul Azmi Adnan JCA delivering the judgment of the court:

(1) While s. 47(2)(d) of the LAA expressly requires any decision relating to an award of compensation to explain the reasons for awarding the amount under each head of compensation, it was not done so in the grounds of judgment dated 2 May 2023 and the order of the High Court dated 20 July 2022. Moreover, the 20 July 2022 order was only signed by the judge and not by the assessors, contrary to the requirements of s. 47(1) of the LAA. The written decision, which was subsequently supplied by the court registry to the landowners with the signatures of the judge and assessors duly affixed, also did not contain the grounds or reasons for the award of compensation. (paras 18 & 21-23)

(2) The High Court appeared to have come to conclusion that the appeal mounted by the LA could not conceivably have included a question of law based on two erroneous suppositions. The first was that there was no real question of law arising because the LA's notices of appeal contained no particulars of the questions of law being raised. Even though the LA's notices of appeal may be said to be precariously bereft of details, the notices were in substantial compliance with Form 1 in the

First Schedule to the Rules of the Court of Appeal 1994. Under these rules, it is the memorandum of appeal that must contain the grounds of objection to the decision appealed against, accompanied with specifics of the points of law or fact which are alleged to have been wrongly decided. Depending on the circumstances, a memorandum of appeal may or may not be available to the judge against whose decision the appeal is mounted. It was premature for the judge to pronounce on the adequacy or otherwise of the questions of law being posed, based merely on the contents of the notices of appeal. Further, the High Court could not arrogate to itself questions that were for the Court of Appeal to answer. Whether or not the issues raised in the appeal fell foul of the proviso to s. 49 of the LAA must clearly and obviously be determined by the court sitting in appeal, and not by the court whose decision is being appealed from. (paras 30-34)

(3) The second erroneous supposition was that there could not have been any question of law arising because the land reference proceedings had been commenced by the landowner on the grounds that the compensation offered was inadequate. The legal consequence of the landowner having sold units in its proposed development, a fact that appeared to have been established in the proceedings at the court below, was *prima facie* a question of law. The proper determination of whether or not a point of appeal contravenes the proviso to s. 49 of the LAA must await any further appeal against the decision of the land reference court. (paras 30 & 38)

(4) The circumstances of the case justified a rehearing of the land reference. The land reference proceedings were directed to be remitted back to the High Court to be heard before another judge. (paras 40 & 41)

Case(s) referred to:

Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat [2021] 3 CLJ 1 FC ***(refd)***

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 36(4), 37(1), 47(1), (2)(d), 49(1)
Rules of the Court of Appeal 1994, r. 18(1)

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For respondent - Teo Cheng Wee & Ong Teck Lee; M/s Khaw & Partners

[Editor's note: Appeal from High Court, Alor Setar; Land Reference Nos: 15NCVC-15-2-2012 & 15NCVC-16-2-2012 (overruled).]

Reported by S Barathi

JUDGMENT

Azizul Azmi Adnan JCA:

Introduction

[1] The present appeals involved the compulsory acquisition of two pieces of land in Alor Setar. We allowed the appeal of the Land Administrator in Appeal Nos. 614 and 615, and directed that the land reference proceedings in respect of both pieces of land be remitted back to the High Court of Alor Setar, to be heard before a different judge. These grounds of judgment record the reasons for our decision, and constitute the judgment of the court.

Material Background Facts

[2] Tunku Yaacob Holdings Sdn Bhd was the registered proprietor of two pieces of land. It was the respondent before us in Appeal Nos. 614 and 615 and the appellant in Appeal Nos. 623 and 624, and is described in these grounds as the "landowner". Notice had been given to it in July 2011 for the compulsory acquisition of the two pieces of land, described as Lots 150 and 151. On Lot 150 at the material time was a derelict semi-constructed building known as Plaza Tunku Yaacob, which at the time of the notice in Form E had already been abandoned for some 30 years. By contrast, Lot 151 was an empty plot.

[3] Before the grant of the award of compensation by the Land Administrator, the landowner challenged the legality of the compulsory acquisition through judicial review proceedings. It was ultimately unsuccessful in these judicial review proceedings. These proceedings were finally disposed of in November 2017 when the Federal Court refused the landowner leave to appeal.

[4] Form K under the Land Acquisition Act 1960 was issued on 30 October 2011, which meant that formal possession of the lands was deemed to have been taken on this date.

[5] On 17 August 2011, the Land Administrator for Kota Setar awarded RM12,017,842.36 as compensation for the acquisition of Lot 150 and RM12,524,950.72 for Lot 151.

[6] The landowner objected to the amount of compensation awarded and applied for its objection to be referred to the High Court. The land reference proceedings at the High Court were commenced in February 2012 but subsequently stalled, and only resumed once leave to appeal in the judicial review proceedings was refused by the Federal Court in November 2017.

[7] At the High Court, the amount of compensation was substantially increased, principally on the basis that value ought to be attributed to the derelict building on Lot 150, but also based on a reassessment of the land value.

[8] The following table summarises the amount of compensation awarded by both the Land Administrator at first instance and by the High Court following the land reference proceedings:

	Lot 150(RM)	Lot 151(RM)	RM/ft²
Amount of compensation initially awarded by the Land Administrator	12,017,842.36	12,524,950.72	151.00
Increase in compensation awarded by the High Court attributable to the value of land only	3,768,347.64	3,927,359.28	198.38
Increase in compensation awarded by High Court attributable to the value of the building on Lot 150	14,388,460		
Total compensation payable	30,174,650	16,452,310	

[9] It may thus be seen that the total compensation payable for both Lots 150 and 151 had been increased by the High Court from RM24,524,793.08 to RM46,626,960, representing an increase of RM22,084,166.92, or approximately 89.98%.

[10] The High Court also awarded late payment charges at a rate of 5% per annum from 27 November 2017 (being the approximate date the Federal Court refused leave for the judicial review proceedings) until full satisfaction of the additional compensation sum.

Issues

The Appeals

[11] Against this decision of the High Court, four appeals were mounted:

(i) Appeal No. 614: the Land Administrator's appeal against the determination of the High Court in respect of Lot 150;

(ii) Appeal No. 615: the Land Administrator's appeal against the determination of the High Court in respect of Lot 151;

(iii) Appeal No. 623: the landowner's appeal against the decision, in respect of Lot 150, to award late payment charges commencing from the refusal of the leave application at the Federal Court for the judicial review proceedings (November 2017), rather than the date on which vacant possession was deemed to have been taken (November 2011); and

(iv) Appeal No. 624: the landowner's appeal in respect of Lot 151 on the timing of commencement of late payment charges.

[12] The Land Administrator raised a number of different grounds of appeal. Those grounds of appeal, as set out in the additional memorandum of appeal, may conveniently be categorised into two:

(i) first, the contentions that the learned judge of the High Court had not strictly complied with the terms of the Land Acquisition Act 1960 when delivering the award;

(ii) second, there were a number of grounds of appeal expressed as questions of law raised in connection with the decision of the High Court, including the contended failure by the High Court to account for the fact that the landowner, having sold some units in the building, was not beneficially entitled to the whole of the compensation awarded in respect of Lot 150, and the contended failure to account for the fact that the building in question did not have the requisite planning permission at the material time.

[13] Under the proviso to s. 49(1) of the Land Acquisition Act 1960, no appeal may be made against a decision of the High Court where that decision "comprises an award of compensation". The courts have construed this proviso strictly, to mean that appeals to the Court of Appeal and the Federal Court may not be made in respect of issues of fact on the ground of quantum of compensation, but that an appeal may lie on questions of law (*Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526).

The Grounds Of The High Court

[14] In the grounds of judgment of the High Court, the learned judge expressed his view that the Land Administrator's appeal was incompetent. According to the learned judge, since the landowner's objections to the award by the Land Administrator at first instance had emanated solely on the amount of compensation payable and that the decision of the High Court related entirely to the amount of compensation payable, there could not be said to be any question of law that would arise in the appeal.

[15] The relevant passages of the judgment of the court below bear reproduction *in extenso*:

> [5] From the Notices of Appeal, this Court finds that the appeals only pertain to the additional compensation awarded by this Court to the Applicants and nothing else. Though the phrase of legal issue is mentioned in the appeals, it is just a mention without any details. So, this Court is of the view that there is no real questions of law arises in the appeals.
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> …

A [10] Hence, applying the legal principles that have been established in *Nusantara Daya* (*supra*) and the above case laws, since the Applicants' objection in Form N and the decision of this Court in both Suit No: 15 and Suit No. 16 are purely relating to the amount of compensation, and no real questions of law and/or other matters to be appealed other than the compensation and the amount of compensation (such as the B measurement of the scheduled land, persons to whom the compensation is payable, *etc.*) have been raised by the Respondents in the Notices of Appeal, it is the view of this Court that the Respondents' Notices of Appeal are incompetent.

[16] It may be observed that the High Court made this determination based C on the landowner's notices of appeal, which state little more that each appeal was made against the whole of the decision of the High Court on points of law, without further elaboration.

[17] Crucially, the High Court did not in its grounds of judgment explain the basis of its decision to increase the compensation amounts payable for the D two properties, nor on why late payment charges should accrue from November 2017 rather than November 2011.

Decision

[18] We were of the respectful view that the course adopted by the court E below was in error for two reasons:

(i) first, the failure to explain the basis of the awards of compensation constituted a breach of s. 47 of the Land Acquisition Act 1960; and

(ii) second, the High Court by determining that the appeals were F incompetent had arrogated to itself questions that were for the Court of Appeal to answer.

[19] We address these reasons in turn in the following paragraphs.

Section 47 Of The Land Acquisition Act 1960

G **[20]** Section 47 of the Land Acquisition Act 1960 provides as follows:

Section 47. Award to be in writing.

(1) Every decision made under this Part shall be in writing signed by the Judge and the assessors.

H (2) Where such decision comprises an award of compensation it shall specify:

(a) the amount awarded on account of the market value of the land under paragraph 2(a) of the First Schedule;

(b) the amount, if any, deducted under paragraph 2(b) of the First I Schedule;

(c) the amounts, if any, respectively awarded under paragraphs 2(c), (d) and (e) of the First Schedule; and

(d) in respect of each such amount, the grounds for awarding or deducting the said amounts.

(3) Every such written decision or award shall be deemed to be a decree and the statement of the grounds of any such award a judgment within the meaning of the law for the time being in force relating to civil procedure.

[21] Of particular relevance is s. 47(2)(d), which expressly requires any decision relating to an award of compensation to explain the reasons for awarding the amount under each head of compensation. It is clear that the grounds of judgment supplied by the court below are not done so.

[22] The grounds of judgment were dated 2 May 2023. The order of the High Court, which was dated 20 July 2022, did not contain the grounds or reasons for the awards of compensation either, and accordingly was also not in compliance with s. 47(2)(d). Moreover, the 20 July 2022 order was only signed by the judge, and not by the assessors, contrary to the requirements of s. 47(1)[1].

[23] On 27 December 2023, the court registry, perhaps upon becoming aware of this issue, supplied to the solicitors for the landowner a copy of the written decision (salinan bertulis keputusan) for the two cases before the High Court, this time with the signatures of the judge and assessors duly affixed. This written decision similarly did not contain the grounds or reasons for the award of compensation, as required by s. 47(2)(d) of the Land Acquisition Act 1960.

[24] It may thus be seen that all three documents – the order of the court, the grounds of judgment and the written decision – did not contain the reasons for the award of additional compensation at the High Court. Counsel for the landowner nonetheless argued that there had been no contravention of s. 47, because the learned judge had explained the basis of his decision orally when delivering his decision on 20 July 2022. According to counsel for the landowner, based on accepted principles of statutory construction, this court must read the requirements of the Land Acquisition Act 1960 generously in favour of the dispossessed landowner.

[25] It is of course settled law that the courts, in construing the Land Acquisition Act 1960, must be mindful that the forced acquisition of property is an incursion into fundamental liberties. Such legislation must thus be construed strictly. In *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* [2021] 3 CLJ 1; [2021] 4 MLJ 1, the Federal Court through Vernon Ong FCJ stated as follows:

A [68] It must be borne in mind that the LAA 1960 is a special enactment dealing with the fundamental right to property under art. 13 of the Federal Constitution. As a general rule, such statutes should be construed strictly and any doubt should be resolved in favour of the landowner so as to give meaning to the constitutional protection of a person's right to his property (*Ee Chong Pang* (*supra*) at para. [21]; *Sistem Lingkaran Lebuhraya*
B *Kajang Sdn Bhd* (*supra*) at para. [4]).

[26] However, the passage quoted above simply establishes a principle of construction, which is intended to be applied to resolve ambiguities. In this present case, the plain meaning of the words in s. 47 is abundantly clear and brooks no doubt as to the meaning intended by the Legislature. It is not open
C to this court to disapply the provisions of written law where the meaning of the provision in question is clear and unambiguous.

[27] Furthermore, if the notes of proceedings for 20 July 2022 are examined closely, they do not contain any explanation by the land reference
D court as to why it considered that value ought to be attributed to the abandoned semi-completed building on Lot 150. The judge explained that he considered depreciated replacement cost as being a better basis for valuation of the building rather than the strata title basis for valuation, but he did not explain why he and the assessors were of the view that value ought to be accorded to the building at all. (There were conflicting opinion evidence
E before the court regarding the viability of retaining the existing structures.)

[28] Therefore, even if we were minded to agree with counsel for the landowner that s. 47 can be read down to permit reasons to be given orally, the reasons supplied as recorded in the notes of proceedings do not
F adequately explain the awards of compensation made by the land reference court.

[29] The foregoing reasons on their own would have been sufficient to have disposed of the appeals. At this point, this court was faced with a number of different options: we could have adjourned the proceedings in the four
G appeals and directed the land reference court to provide grounds of judgment that were in compliance with the requirements of the Land Acquisition Act 1960; we could have allowed the Land Administrator's appeals and directed that the land reference be heard afresh; or we could have ourselves determined the questions of law posed by the Land Administrator. In the
H final analysis, we determined that the justice of the case required the land reference to be heard afresh. Our decision to do so was driven at least in part by our findings that are discussed in the following paragraphs.

The Questions Of Law

[30] The High Court appeared to have come to conclusion that the appeal
I mounted by the Land Administrator could not conceivably have included a question of law based on two suppositions:

(i) that there was no real question of law arising because the Land Administrator's notices of appeal contained no particulars of the questions of law being raised; and

(ii) that there could not have been any question of law arising because the land reference proceedings had been commenced by the landowner on the grounds that the compensation offered was inadequate.

[31] Both these suppositions were erroneous.

[32] Even though the Land Administrator's notices of appeal may be said to be precariously bereft of details, we were of the view that the notices were in substantial compliance with Form 1 in the First Schedule to the Rules of the Court of Appeal 1994. Under these rules, it is the memorandum of appeal that must contain the grounds of objection to the decision appealed against, accompanied with specifics of the points of law or fact which are alleged to have been wrongly decided (see r. 18(1) of the Rules of the Court of Appeal 1994). Depending on the circumstances, a memorandum of appeal may or may not be available to the judge against whose decision the appeal is mounted. In any event, it would be open to an appellant to apply to amend its memorandum of appeal after having received the grounds of judgment.

[33] It was thus premature for the judge to pronounce on the adequacy or otherwise of the questions of law being posed, based merely on the contents of the notices of appeal.

[34] More than just that, however, the High Court could not arrogate to itself questions that were for the Court of Appeal to answer. Whether or not the issues raised in the appeal fell foul of the proviso to s. 49(1) must clearly and obviously be determined by the court sitting in appeal, and not by the court whose decision is being appealed from.

[35] On the second supposition made by the High Court: it is of course true that a referral to court under s. 36(4) of the Land Acquisition Act 1960 can be made pursuant to an objection raised in respect of one of the four matters specified in s. 37(1), one of which is the compensation payable for compulsorily acquired land. In this present case, the landowner had done precisely that.

[36] It does not follow, however, that once an objection as to compensation has been raised, there cannot subsequently arise in appeal a question of law. For instance, if the land reference court had wrongly applied the law in varying the amount of compensation payable, very clearly that would be a matter on which an appeal may validly be made.

[37] Indeed, this was precisely what the Land Administrator claimed to have happened in the present case. One of the arguments advanced for the Land Administrator was that the High Court had failed to take into account

A the fact that the landowner had sold units in the (then) proposed Plaza Tunku Yaacob to purchasers, which meant that the landowner ought not be entitled to the whole of the compensation sum paid in respect of Lot 150. In *Amitabha Guha & Anor v. Pentadbir Tanah Daerah Hulu Langat* (*op cit*), the Federal Court explained that:

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> [A] question of law is a question concerning the legal effect to be given to a set of undisputed facts.

[38] It would appear to us that the legal consequence of the landowner having sold units in its proposed development (a fact that appears to have been established in the proceedings at the court below) is *prima facie* a C question of law. We do not, however, make any definitive pronouncement in this regard, due to the order of this court to send the matter back to the High Court to be heard before a different judge. The proper determination of whether or not a point of appeal contravenes the proviso to s. 49(1) of the Land Acquisition Act 1960 must await any further appeal against the D decision of the land reference court following a rehearing conducted pursuant to the orders of this court.

[39] The High Court thus fell into error when it made the finding that, because the initial objection raised by the landowner related to the compensation payable to it, it must also be the case that no question of law E can arise in an appeal from the decision of the land reference court.

[40] Accordingly, we were of the view that the Land Administrator's appeals ought to be allowed. We considered at length the appropriate orders to be given, and in the final analysis came to the view that the circumstances F of the case justified a rehearing of the land reference. Had we directed the High Court to supply a fresh set of grounds of judgment, this would have placed the judge in the invidious position of having to answer the criticisms of his decision that have been raised in this appeal. We were mindful that, as far as the landowner was concerned, it has now taken two steps forward but one step back, in respect of proceedings that had been instituted some 14 G years ago. Nonetheless, the time incurred in the rehearing could be reduced if, for example, the land reference court can be persuaded to treat the evidence previously tendered as having properly been received before it. The appropriate course must, however, be left to the discretion of the court hearing the matter, as a court sitting in appeal would be slow to pre-empt the H exercise of a discretion belonging to the court of first instance. It should also not be forgotten that a substantial portion of the time incurred could fairly be attributed to the decision of the landowner to institute the judicial review proceedings.

Conclusion

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[41] For the reasons explained in the preceding paragraphs, we considered ourselves constrained to allow the Land Administrator's appeal, and to set aside the orders granted by the court below. As a consequence of the setting

aside of the orders of the High Court, each of the landowner's appeals on interest has lost its substratum. The appeals in Appeal Nos. 623 and 624 were accordingly struck out with no order as to costs. We further directed that the land reference proceedings be remitted back to the High Court at Alor Setar to be heard before another judge, and for each of the parties to bear its own costs in Appeals Nos. 614 and 615.

Endnotes:

1. This, however, may well be an error that is capable of rectification: see *Mutiara Rini v. Pentadbir Tanah Daerah Petaling* [2020] CLJU 658; [2020] 1 LNS 658